

IN THE COURT OF SUBORDINATE JUDGE, PANRUTI

Present: Mrs. Anitha Anand, M.B.A., L.L.M.

Subordinate Judge, Panruti.

Friday, the 12th day of June, 2026

O.S. No. 169/2010

1. K. Jothi
2. K. Sankar
3. K. Dhanalakshmi
4. M. Mallika

... Plaintiffs

Vs.

1. Bageerathan
2. Pragasam
3. Panneerselvam
4. Ragothaman
5. Palanisamy
6. Kandhamani
7. Rajakumari
8. N. Santhi *

*Originally impleaded as the 4th Plaintiff and then transposed as the 8th defendant
as per order in I.A. No. 172/2018, Dated: 02.04.2018

... Defendants

This suit was finally heard on 10.06.2026 and upon perusal of the pleadings, evidence and written argument and on hearing submissions, this court passes the following Judgment:

Counsel for the Plaintiffs : M/S. A. Ranganathan and M. Vijayarani

Counsel for the Defendants : Mr. M. Ram Mohan, B.Sc., B.L.,

J U D G E M E N T

The suit has been filed by the Plaintiffs for partition, to pass a preliminary decree for declaring $\frac{1}{2}$ share of the Plaintiff and 8th defendant in the suit properties and then to proceed for a final decree to divide the suit properties by metes and bounds and allot half share to the plaintiffs and the 8th defendant by appointing an Advocate commissioner and for costs.

2. Gist of averments of the plaint

2.1. The suit properties are situated in Palur Village and Kizharungunam Village, Panruti Taluk. The suit properties are ancestral and joint family properties of Ramu and Kaliaperumal. In order to prove that the suit landed properties are ancestral and joint family properties of Ramu and Kaliaperumal, the certified copy of the mortgage deed executed by Ramu and Kaliaperumal in favour of K.S. Subramaniya Iyyar on 12.04.1964 is filed herewith and may be read as part and parcel of the plaint.

2.2. The said Ramu and Kaliaperumal are the sons of Manicka Padayatchi. The said Ramu was the elder brother of Kaliaperumal. Ramu died on 21.03.1996, leaving behind the defendants as his sons and daughters. The younger brother, Kaliaperumal, died on 26.05.1989, leaving behind Plaintiffs 1 and 2 as his sons, the 3rd plaintiff as his widow, and the 4th plaintiff and 8th defendant as his daughters. The obsequies invitation cards of Ramu and Kaliaperumal are filed herewith and may be read as part and parcel of the plaint.

2.3. The plaintiffs and defendants are jointly residing in the suit house bearing Door No.154, Mariamman Koil Street. Till date, without any partition or division of the suit properties, the plaintiffs and defendants have been jointly enjoying the same. But the 1st defendant fraudulently created false records in respect of a portion of the suit landed properties and filed a suit against Plaintiffs 1

and 2 in O.S. No.191 of 2010 on the file of the District Munsif Court, Panruti, as if the said property was his self-acquired property.

2.4. Further, the 2nd defendant filed a suit against the 1st plaintiff in O.S. No.233 of 2007 on the file of the District Munsif Court, Cuddalore, seeking permanent injunction against the 2nd defendant from obtaining an electricity service connection in his name in the suit house. The said suit was dismissed on 02.06.2007.

2.5. In the above circumstances, it is not possible for the plaintiffs to continue the joint enjoyment of the suit properties with the defendants. The plaintiffs made several requests to the defendants for an amicable partition, but the defendants have not come forward to divide the suit properties. Further, the defendants are often threatening and attacking the plaintiffs. Hence, the plaintiffs have filed this suit for partition and separate possession of their half share in the suit properties.

2.6. Initially, the plaint exhibited the present 8th defendant as the 4th plaintiff. As she deposed as DW4 in favor of the defendants, she was subsequently transposed as the 8th defendant. Hence, the plaintiffs have now prayed for partition and separate possession of their half share in the suit properties in favour of themselves and the 8th defendant.

3. Gist of averments of the Written Statement filed by the 5th defendant and adopted by the other defendants.

3.1. The defendants deny each and every allegation and averment contained in the plaint, except those that are specifically admitted herein. The defendants submit that Item Nos. 1 to 3 of the suit properties originally belonged to Ramu Padayachi, the father of the defendants. Ramu Padayachi, being the absolute owner of Item Nos. 1 to 3 of the suit properties, was in possession and enjoyment of the same till his death. The patta also stands in the name of Ramu Padayachi.

3.2. During his lifetime, Ramu Padayachi executed a registered Will dated 27.12.1993 in a sound and disposing state of mind, bequeathing all his properties, namely Item Nos. 1 to 3 of the suit properties, in favour of the defendants. The said Will is true, valid, genuine, accepted and acted upon. Upon the death of Ramu Padayachi, the Will came into effect. In pursuance of the recitals contained in the Will dated 27.12.1993, the defendants took possession of Item Nos. 1 to 3 of the suit properties and have been in continuous possession and enjoyment thereof ever since. Therefore, the defendants are the absolute owners of Item Nos. 1 to 3 of the suit properties. Hence, the allegation that the suit properties constitute joint family properties is false. There were no joint family nucleus and no joint family ownership in respect of Item Nos. 1 to 3 of the suit properties at any point of time, as alleged in the plaint.

3.3. The defendants filed O.S. No. 23 of 2007 on the file of the District Munsif Court, Cuddalore, seeking permanent injunction against the Electricity Board for effecting service connection to their house. The said suit was dismissed by the trial Court. Aggrieved by the dismissal, the defendants have preferred an appeal before the Subordinate Court, Cuddalore, and the same is pending disposal. The plaintiffs have no right whatsoever to question the title of the defendants. The defendants have no knowledge regarding Item Nos. 4 and 5 of the suit properties, and the description of the said properties is incorrect.

3.4. In any event, the plaintiffs are not entitled to any share in Item Nos. 1 to 3 of the suit properties, as the said properties are not joint family properties of the plaintiffs and defendants. There is no cause of action for the suit. The alleged cause of action is false, invented and created solely for the purpose of instituting this vexatious suit. The plaintiffs were never in joint possession of Item Nos. 1 to 3 of the suit properties at any point of time. The allegation of joint possession and enjoyment is wholly false and without any factual basis.

3.5. The plaintiffs have no manner of right, title or interest over Item Nos. 1 to 3 of the suit properties. The suit has been filed only with a view to harass the defendants and to make an unlawful claim over properties in which the plaintiffs have no right or interest.

3.6. The court fee paid by the plaintiffs is insufficient and incorrect. The plaintiffs ought to have valued the suit and paid court fee under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act. Therefore, the question relating to valuation of the suit and payment of proper court fee has to be decided as a preliminary issue. Since the plaintiffs were never in joint possession of Item Nos. 1 to 3 of the suit properties, they are not entitled to invoke Section 37(2) of the Act.

3.7. The suit is barred by limitation. The suit is also an abuse of the process of Court. The defendants reserve their right to file an appropriate application for rejection of the plaint in accordance with law.

4. Gist of averments of the Additional Written Statement filed by the 1st defendant and adopted by the other defendants.

The defendants filed an additional written statement after the closure of the plaintiff's evidence. In their written statement, they had stated that Item Nos. 1 to 3 of the suit properties were purchased by their father, Ramu Padayachi. However, in the additional written statement, they changed their stand and contended that there had been an oral partition between Ramu Padayachi and Kaliyaperumal in the year 1963, under which the family properties were divided and separate shares were allotted to each of them. The properties allotted to the share of Kaliyaperumal were subsequently sold to one Natesa Goundar in the year 1967 under a sale deed executed by both Kaliyaperumal and Ramu Padayachi. Significantly, the said Natesa Goundar was the father-in-law of Kaliyaperumal.

4.2. Thus, Kaliyaperumal had obtained his share in the family properties and dealt with the same as his absolute property. Having taken his share in the partition and alienated the same, neither Kaliyaperumal nor his legal heirs are entitled to claim any further share in the suit properties.

4.3. Kaliyaperumal never asserted any right or claim over the suit properties during his lifetime, as he had already received his share in the properties belonging to his father, Manicka Padayachi. From the date of the oral partition, Kaliyaperumal ceased to have any right, title or interest in the suit properties. The defendants therefore specifically plead prior partition and ouster insofar as the claim of Kaliyaperumal and his successors-in-interest is concerned.

4.4. Further, during his lifetime, Ramu Padayachi executed a registered Will dated 27.12.1993 in a sound and disposing state of mind, bequeathing all his properties, namely Item Nos. 1 to 3 of the suit properties, in favour of the defendants. The said Will is true, valid, genuine, accepted and acted upon. Upon the death of Ramu Padayachi, the Will came into effect. In pursuance of the recitals contained therein, the defendants took possession of Item Nos. 1 to 3 of the suit properties and have been in continuous possession and enjoyment thereof ever since. Accordingly, the defendants are the absolute owners of Item Nos. 1 to 3 of the suit properties.

4.5. Therefore, the allegation that the suit properties constitute joint family properties is false. There was no joint family nucleus or joint family ownership in respect of Item Nos. 1 to 3 of the suit properties at any point of time, as alleged in the plaint.

4.6. The suit is also bad for partial partition, since all the properties belonging to Manicka Padayachi have not been included in the suit schedule. Without inclusion of all the joint family properties, if any, the present suit for partition is not maintainable. Hence, the suit is liable to be dismissed with costs.

5. On the basis of the above pleadings, the following issues are framed on 10.10.2015

1. Whether the suit items 1 to 3 properties are bequeathed by the father of the defendants as alleged by the defendants?
2. Whether the defendants are absolute owner of suit properties items 1 to 3 as alleged by the defendants?
3. Whether the suit items 4 and 5 properties are joint family property of the plaintiff and defendant as alleged by plaintiff?
4. Whether the plaintiff is entitled for partition of suit properties as prayed for?
5. To what other relief?

6. Evidence on the side of the Plaintiffs

6.1. On the side of the Plaintiff, the 1st Plaintiff and two others from their village were examined as PW1 to PW3 respectively. All the witnesses were cross examined by the Defendants.

6.2. Exhibits A1 to A8 were marked through P.W.1 as the plaintiff side documents.

- Ex.A1 and A2 are the certified copies of the sale deed dated 8/7/1926 and 28.5.1928 executed in favor of Manicka Padayachi, grandfather of the plaintiffs and defendants for a portion of the suit item no.1.
- Ex.A3 is the certified copy of mortgage deed dated 12.4.1964 executed by Ramu Padayachi and Kaliyaperumal Padayachi, fathers of the plaintiffs and defendants in respect of land in survey number 205/5 in

larger extent (a small portion of the suit item no.1).

- Ex.A4 and A5 – Obsequies invitation card of the fathers of the Plaintiffs and Defendants
- Ex.A6 – Kist receipt in the name of the 1st Plaintiff for Patta No. 388 issued for Fasli year 1405 (corresponding Calendar year 1997)
- Ex.A7- Certified copy of the Judgment passed by Principal District Munsif, Cuddalore, under which the Original Suit Number 233 /2007, filed by the 2nd defendant against the 1st Plaintiff and Electricity Board, to restrain the electricity service connection in the name of the plaintiff, was dismissed on 2.6.2010.
- Ex.A8- Certified copy of the plaint in O.S.No. 91/2010 on the file of the District Munsif, Panruti, filed for declaration of title over six cent land in old Survey Number 215/7 and new survey number 187/2 (not relevant to the survey numbers mentioned for the suit items)

7. Evidence on the side of the Defendants

7.1. On the side of the defendants, D.W.1 to D.W.5 were examined. The 1st defendant, the 2nd defendant, a villager, the 8th defendant, and another villager were examined as D.W.1 to D.W.5 respectively. **Except D.W.4 and D.W.5, the other witnesses were cross examined by the Plaintiffs.** As DW5 failed to appear for cross examination, DW5 was not able to be cross examined. However, the testimony of DW5 has not been eschewed.

7.2. Exhibits B1 to B6 were marked.

- Ex.B1 and Ex.B2 are marked through D.W.1 and they are the certified copies of the registered Will dated 27.12.1993 executed by Ramu Padayachi in favour of the defendants 1 to 7 in respect of major portion of the 1st suit item and some other landed properties and sale deed dated

22.11.1967 executed by Ramu Padayachi and Kaliyaperumal Padayachi in respect of the land in Survey Number 108/1 (not relevant to the suit property)

- Ex.B3 to B6 are marked through D.W.2.
- Ex.B3 – Five Kist receipts in the name of Ramu Padayatchi for the patta number 65 and 388 issued in the fasli year 1377, 1385, 1387 and 1388 (Corresponding Calendar years 1969, 1977, 1979 and 1980)
- Ex.B4 – Old Electricity Bills in the name of Ramu Padayatchi issued on 15.2.1990, 15.9.1977, 14.7.1977, 14.8.1977 and 14.9.1977
- Ex.B5 and B6– Patta bearing No. 388 for the land of 1 Hectare and 16 Ares in New Survey Number 278/1 (Suit Item No.1) issued on 3/2/2017 and A Register Extract for the land in the above survey number.

8. The learned counsel for the Plaintiffs advanced arguments and submitted written arguments and additional written arguments. On the side of the Defendants, no arguments were advanced despite several opportunities having been granted.

9. Recast Issues to be determined:

On a perusal of the pleadings of both sides and the evidence on record, the issues are recast as follows:

- 1. Whether Item Nos. 1 to 5 of the suit properties are the ancestral and joint family properties of the fathers of the plaintiffs and defendants?*
- 2. Whether the suit is barred by limitation?*
- 3. Whether the suit has been properly valued and whether the court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is correct?*

4. Whether the plaintiffs and the 8th defendant are entitled to a half share in all the items of the suit properties as prayed for?

5. To what reliefs are the plaintiffs entitled?

10. Finding on Issues:

10.1. Issue No.1

Whether Item Nos. 1 to 5 of the suit properties are the ancestral and joint family properties of the fathers of the plaintiffs and defendants?

10.1.1. The plaintiffs and the 8th defendant are the legal heirs of Kaliyaperumal Padayatchi, and defendants 1 to 7 are the legal heirs of Ramu Padayatchi. The fathers of the plaintiffs and the defendants were brothers and the sons of one Manickka Padayatchi. The relationship between the parties is not in dispute and is admitted by the defendants.

10.1.2. The plaintiffs have stated that all the suit properties were purchased by Manickka Padayatchi, that they have not yet been partitioned, and that they are ancestral and joint family properties. On the other hand, the defendants specifically denied the said averments and stated in their written statement that Item Nos.1 to 3 of the suit properties were purchased by their father, Ramu Padayatchi, and that during his lifetime he executed a registered Will dated 27.12.1993 bequeathing Item Nos.1 to 3 in their favour.

10.1.3. Per contra, in the additional written statement, the defendants stated that Item Nos.1 to 3 were allotted to their father in an oral partition between their father and Kaliyaperumal Padayatchi, the father of the plaintiffs and the 8th defendant. According to them, Kaliyaperumal Padayatchi sold the properties allotted to his share to his father-in-law, and Item Nos.1 to 3 of the suit properties are the properties allotted to the share of their father, who retained and later bequeathed them to the defendants. The defendants have not raised any specific defence with regard to Item Nos.4 and 5 of the suit properties.

10.1.4. The plaintiffs have relied upon Exs.A1 to A3 to prove that the suit properties are the ancestral and joint family properties of the fathers of the plaintiffs and defendants. Ex.A1 is the sale deed dated 08.07.1926 standing in the name of Manickka Padayatchi, the grandfather of the parties. It reveals the purchase of 7 cents in S.No.214/4, 39 cents in S.No.215/8 and 3 cents in S.No.215/9, totalling 49 cents. Ex.A2 is the sale deed dated 28.05.1928 in favour of the grandfather of the parties, showing the purchase of 40 cents in S.No.215/2, 7 cents in S.No.215/5 and 4 cents in S.No.215/10, totalling 51 cents. Ex.A3, the mortgage deed dated 12.04.1964, reveals the mortgage of 2 acres and 10 cents in S.No.205/5 by Ramu Padayatchi and Kaliyaperumal Padayatchi.

10.1.5. As per the schedule in the plaint, the first item of the suit property measures 1 hectare and 16 ares (2 acres and 47 cents) in New S.No.278/1, which comprises Old S.Nos.205/5, 215/1, 215/8 and 215/2. Exs.A1 and A2 reveal the purchase of a total extent of 1 acre by the grandfather of the parties. Ex.A3 further shows that the mortgage deed was jointly executed by both Ramu Padayatchi and Kaliyaperumal Padayatchi in respect of the land in S.No.205/5. These documents support the plea of the plaintiffs that the first item of the suit property was enjoyed and possessed by the fathers of both parties as ancestral property.

10.1.6. On the other hand, the defendants relied upon Ex.B1, the Will executed by their father. The Will reveals that Ramu Padayatchi bequeathed the first item of the suit property to defendants 1 to 7 along with another property in S.No.69/11. The defendants further relied upon Ex.B5, Patta No.388 standing in the names of defendants 1 to 5 in respect of the first item of the suit property, issued in the year 2017 during the pendency of the suit.

10.1.7. The defendants also produced kist receipts relating to Patta No.388 standing in the name of Ramu Padayatchi for Fasli Years 1385, 1387 and 1388 (corresponding to the calendar years 1975, 1977 and 1978). On the other hand, the

plaintiffs produced a kist receipt relating to the same patta standing in their name for the year 1997. Ex.B6, the A-Register extract relating to the first item of the suit property standing in the names of defendants 1 to 5, also appears to have been issued only in the year 2017.

10.1.8. Though the defendants contend that the suit properties had been orally partitioned and that the first item was allotted to the share of Ramu Padayatchi, no patta standing in his name prior to the suit has been produced to substantiate the said plea. Further, though the defendants took a contradictory stand in the additional written statement that the family properties had been partitioned and that the properties allotted to Kaliyaperumal Padayatchi had already been sold by him, they were unable to furnish particulars of the properties allegedly allotted to Kaliyaperumal Padayatchi or the subsequent transactions relating thereto.

10.1.9. Ex.B1, the Will, cannot be treated as an ancient document under Section 90 of the Indian Evidence Act so as to dispense with formal proof. The Will has been proved in the manner required under Section 68 of the Indian Evidence Act, 1872 by examination of one of the attestors as D.W.5. However, the Will executed by the father in respect of properties originally purchased by the grandfather, without any recital regarding the origin of title, cannot by itself establish the exclusive ownership claimed by the defendants.

10.1.10. It is significant to note that, in the written statement, the defendants stated that Item Nos.1 to 3 were purchased by their father, whereas in the additional written statement they stated that the same properties were allotted to him in an oral partition. These contradictory pleas considerably weaken the defence set up by the defendants in respect of the first item of the suit property.

10.1.11. During cross-examination, both D.W.1 and D.W.2, who are defendants 1 and 2 respectively, were unable to state clearly whether the suit properties were ancestral properties or the self-acquired properties of their father.

D.W.2 merely stated that he was not aware of the particulars and that, to the best of his knowledge, his father had been enjoying the properties. They further stated that their father, being the elder member of the family and managing the properties, was allotted a larger share. They were also unable to state specifically when the alleged oral partition took place.

10.1.12. Ex.A3, the mortgage deed of the year 1964, and Ex.B2, the sale deed of the year 1967, show joint execution by both brothers. Mere production of kist receipts standing in the name of Ramu Padayatchi cannot advance the defence, since D.W.1 and D.W.2 have admitted that he was managing the family properties on behalf of the family.

10.1.13. From the evidence discussed above, it is clear that the plaintiffs have produced documentary evidence tracing the origin of title of the first item of the suit property to Manickka Padayatchi, the common ancestor of both branches of the family. Exs.A1 and A2 establish the acquisition of the property by the grandfather of the parties, and Ex.A3 evidences joint enjoyment and dealing with the property by both Ramu Padayatchi and Kaliyaperumal Padayatchi. On the other hand, the defendants have failed to produce satisfactory evidence to prove either their plea that the property was the self-acquired property of Ramu Padayatchi or their alternative plea that it had been allotted to his share in an oral partition. The contradictory stands taken by the defendants, the absence of particulars regarding the alleged oral partition, and the failure to prove Ex.B1 Will in the manner known to law considerably weaken their defence. The revenue records produced by the defendants are of a period subsequent to the institution of the suit and are insufficient to establish exclusive title.

10.1.14. There is no material on record to show that a joint family continued to be maintained by the parties after the lifetime of Ramu Padayatchi and Kaliyaperumal Padayatchi. The evidence on record only establishes that

certain properties remained undivided and available for partition. Mere existence of joint family properties does not by itself establish that the parties continued to live as members of an undivided joint family. Accordingly, it is held that no joint family is presently maintained between the parties.

10.1.15. Therefore, **this Court holds that Item No.1 of the suit properties is an ancestral property of the branches of Kaliyaperumal Padayatchi and Ramu Padayatchi, and the defendants have failed to establish their claim of exclusive ownership over the same.**

10.1.16. Item No.2 of the suit property is 12 cents of land with a borewell and Electricity Service Connection No.281 in in S.Nos.287/2 and 287/3. Item No.3. of the suit properties is a vacant site measuring 327 sq. metres with a tiled house in S.No.261/3. Item No.4 is a vacant site measuring 120 sq. metres with a thatched house in S.No.256/19. Item No.5 is a vacant site measuring 680 sq. metres out of a total extent of 1,630 sq. metres in S.Nos.253/1 and 256/1.

10.1.17. No documentary evidence has been produced by the plaintiffs with regard to Item Nos.2 to 5. The plaintiffs relied upon the judgment of the learned Principal District Munsif, Cuddalore, in O.S.No.233 of 2007. The said suit was filed by the second defendant against the Electricity Board Department and the first plaintiff seeking to restrain the Electricity Board from granting electricity service connection in the name of the first plaintiff. However, the judgment does not contain any description of the property involved and, therefore, it cannot be ascertained whether it has any relevance to Item Nos.3 to 5 of the suit properties.

10.1.18. Ex.A8 is the plaint in O.S.No.191 of 2010 filed by the first defendant against plaintiffs 1 and 2 seeking declaration of title and permanent injunction in respect of a few cents of land in New S.No.215/7. The said survey number does not correspond with any of the survey numbers found in the suit schedule properties. Hence, neither of these documents assists the plaintiffs in

proving title or possession over Item Nos.2 to 5.

10.1.19. In the second page of his cross-examination, D.W.1 stated that the extent of Item No.2 would be only 4 cents and not 12 cents. He further stated that there was no motor or pump set in S.No.287/2 and that the same was situated in S.No.205/1. These statements reveal inconsistencies regarding the identity and extent of the second item. In the absence of any documentary evidence relating to title or possession of the second item of the suit property, **this Court holds that the plaintiffs have failed to prove that Item No.2. is an ancestral property.**

10.1.20. P.W.2 and P.W.3 are villagers. P.W.2 corroborated the evidence of P.W.1 and specifically stated that both the plaintiffs and the defendants were residing in Item No.3 of the suit properties. P.W.3, who is aged about 90 years, stated that the suit properties were purchased by the grandfather of both parties and that the fathers of both parties had jointly mortgaged one of the suit properties.

10.1.21. D.W.1, the first defendant, admitted on the first page of his cross-examination that O.S.No.233 of 2007 related to Item No.3 of the suit property. He further admitted that both the plaintiffs and the defendants are residing in separate portions of the same house and are using the same entrance. D.W.2 also admitted the said fact on the second page of his cross-examination.

10.1.22. The evidence of D.W.3 is vague and does not inspire confidence. Likewise, the evidence of D.W.4 is not worthy of acceptance. It is pertinent to note that D.W.4 had originally joined the plaintiffs and signed the plaint as the 4th plaintiff. Though she was subsequently transposed as the 8th defendant, no satisfactory explanation has been offered for the change in her stand. Her evidence is not supported by any independent material.

10.1.23. The old electricity receipts standing in the name of the defendants' father alone are not sufficient to disprove the case of the plaintiffs. The defendants have admitted that their father, being the elder brother, was managing the family

properties. Therefore, the mere production of electricity receipts in the name of the eldest managing member of the family does not establish exclusive ownership or extinguish the rights of the other sharers.

10.1.24. In view of the above admissions and evidence, this Court holds that **Item No.3 of the suit property is an ancestral property belonging to both branches of the family.**

10.1.25. Both parties have failed to produce any document relating to Item Nos.4 and 5. The electricity receipts produced by the defendants as Ex.B4 relate to Service Connection No.124, but do not contain sufficient particulars to connect them with any of the suit items. P.W.1 stated in his cross-examination that he was not aware of the particulars relating to the acquisition of Item Nos.4 and 5 and that he did not possess any documents in that regard. In absence any document or material to rely on, this court holds that **the Plaintiffs have failed to prove that Items No.4 and 5 of the suit properties are the ancestral properties.**

10.1.26. In view of the foregoing discussion, this Court holds that the plaintiffs have successfully established that Item Nos.1 and 3 of the suit properties are the ancestral family properties of the branches of Kaliyaperumal Padayatchi and Ramu Padayatchi. The defendants have failed to prove their plea of prior oral partition, exclusive ownership, or ouster in respect of the said properties. However, the plaintiffs have not produced sufficient evidence to establish that Item Nos.2, 4 and 5 are ancestral properties. **Accordingly, Item Nos.1 and 3 alone are held to be ancestral properties available for partition between the parties, and Issue No.1 is answered partly in favour of the plaintiffs.**

10.2. Issue No.2

Whether the suit is barred by limitation?

10.2.1. The defendants have raised a plea that the suit is barred by limitation. However, except making a bald averment in the written statement, no

specific plea regarding the date from which limitation commenced has been raised. No evidence has been adduced to establish ouster, exclusion or hostile assertion of title against the plaintiffs for the statutory period.

10.2.2. The relationship between the parties as co-sharers is admitted. The plea of prior oral partition put forth by the defendants has not been proved. The plea of exclusive ownership over Item No.1 based on the alleged Will and revenue records has also been rejected under Issue No.1. In a suit for partition between co-sharers, limitation does not commence merely because one co-sharer is in possession of the property. The burden is upon the party pleading ouster to establish open, hostile and exclusive possession to the knowledge of the other co-sharers. In the present case, no such evidence is available.

10.2.3. Further, with regard to Item No.3, the evidence of D.W.1 itself reveals that both branches of the family are residing in different portions of the same house and are using the common entrance. Therefore, the plea of ouster is clearly unsustainable. Accordingly, this Court holds that the suit is not barred by limitation. Issue No.2 is answered in favour of the plaintiffs.

10.3. Issue No.3

Whether the suit has been properly valued and whether the court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is correct?

10.3.1. The defendants have contended that the plaintiffs were not in joint possession of the suit properties and therefore ought to have valued the suit under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. According to them, the court fee paid under Section 37(2) of the Act is insufficient. In a suit for partition, the question whether court fee is payable under Section 37(1) or Section 37(2) depends upon the averments contained in the plaint and the nature of possession pleaded by the plaintiffs at the time of institution of the suit. The

plaintiffs have specifically pleaded that they were in joint possession and enjoyment of the suit properties along with the defendants.

10.3.2. Further, while considering Issue No.1, this Court has found that both branches of the family were residing in different portions of Item No.3 of the suit property and were using the same entrance. D.W.1 has also admitted such joint occupation. The defendants have failed to establish complete exclusion or ouster of the plaintiffs from the suit properties.

10.3.3. The mere fact that the plaintiffs have not succeeded in proving their claim in respect of all the suit items would not by itself render the court fee paid under Section 37(2) incorrect. The question of court fee has to be determined on the basis of the pleadings and the possession claimed on the date of institution of the suit.

10.3.4. Therefore, this Court holds that the suit has been properly valued and that the court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is correct. Accordingly, **Issue No.3 is answered in favour of the plaintiffs.**

10.4. Issue No.4

Whether the plaintiffs and the 8th defendant are entitled to a half share in all the items of the suit properties as prayed for?

10.4.1. Under Issue No.1, this Court has held that Item Nos.1 and 3 of the suit properties are ancestral properties belonging to the branches of Kaliyaperumal Padayatchi and Ramu Padayatchi. The plaintiffs and the 8th defendant are the legal heirs of Kaliyaperumal Padayatchi, while defendants 1 to 7 are the legal heirs of Ramu Padayatchi.

10.4.2. The defendants have failed to establish either the alleged oral partition of the year 1963 or their plea of exclusive ownership over Item Nos.1 and 3 of the suit properties. Consequently, the branch of Kaliyaperumal Padayatchi is

entitled to one-half share in Item Nos.1 and 3 of the suit properties.

10.4.3. Since the plaintiffs and the 8th defendant are the legal heirs of Kaliyaperumal Padayatchi, they are entitled to succeed to the said one-half share in accordance with law. However, this Court has already held that the plaintiffs have failed to prove that Item Nos.2, 4 and 5 are ancestral joint family properties. Hence, no relief of partition can be granted in respect of those items.

10.4.4. Accordingly, **the plaintiffs and the 8th defendant are entitled to partition and separate possession of the one-half share belonging to the branch of Kaliyaperumal Padayatchi in Item Nos.1 and 3 of the suit properties. Issue No.4 is answered partly in favour of the plaintiffs.**

10.5. Issue No.5

To what reliefs are the plaintiffs entitled?

In view of the findings rendered under Issue Nos.1 to 4, the plaintiffs are entitled to a preliminary decree for partition in respect of Item Nos.1 and 3 of the suit properties alone. The suit is liable to be dismissed in respect of Item Nos.2, 4 and 5. Accordingly, Issue No.5 is answered partly in favour of the plaintiffs.

11. Result

In the result, the suit is partly decreed with costs.

A preliminary decree is passed declaring that the branch of Kaliyaperumal Padayatchi, represented by the plaintiffs and the 8th defendant, is entitled to one-half share in Item Nos.1 and 3 of the suit properties. The plaintiffs and the 8th defendant are entitled to work out their respective shares in the said one-half share during the final decree proceedings and obtain separate possession thereof by metes and bounds.

The relief sought in respect of Item Nos.2, 4 and 5 of the suit properties is dismissed.

*Dictated by me to the Steno-Typist directly, typed by her in the computer.
Corrected and pronounced by me in the open court, this the 12th day of June, 2026.*

Subordinate Judge
Panruti.

LIST OF THE PLAINTIFF SIDE WITNESS ES

Sl. No.	Witnesses	Name of the Witnesses
1	P.W. 1	Mr. Jothi, 1 st Plaintiff
2	P.W. 2	Mr. Jayabalan
3	P.W. 3	Mr. Mannathan

LIST OF PLAINTIFF SIDE DOCUMENTS

Sl.No.	Exhibits No.	Details of Documents
1	Ex. A1	Certified copy of registered sale deed executed in favour of Manickka padaiyachi for a portion of item No. 1 and 2 of suit property, dated.08.07.1926
2	Ex. A2	Certified copy of registered sale deed executed in favour of Manickka padaiyachi for a portion of item No. 1 and 2 of suit property, dated.28.05.1928
3	Ex. A3	Certified copy of registered Mortgage deed executed by Ramu padaiyachi and Kaliyaperumal padaiyachi for the item 1 and 2 of the suit property, dated.12.04.1964

4	Ex. A4	Obsequies Invitation card for the late Kaliyaperumal dated 26.05.1989
5	Ex. A5	Obsequies Invitation for the late Ramu padaiyachi dated 21.03.1996
6	Ex. A6	Kist receipts for the suit property dated 24.08.1996
7	Ex. A7	Certified copy of Judgment of O.S. No. 233/2007 on the file of District Munsif Court, Cuddalore, dated. 02.06.2007
8	Ex. A8	Certified copy of plaint of O.S. No. 191/2010 on the file of District Munsif Court, Panruti.

LIST OF DEFENDANT SIDE WITNESSES

Sl. No.	Witnesses	Name of the Witnesses
1	D.W. 1	Mr. Bageerathan. 1 st Defendant
2	D.W. 2	Mr. Prakasam, 2 nd Defendant
3	D.W. 3	Mr. Ramamoorthy
4	D.W. 4	Mrs. Santhi, 8 th Defendant
5	D.W. 5	Mr. Jayaraman

LIST OF DEFENDANT SIDE DOCUMENTS

Sl.No.	Exhibits No.	Details of Documents
1	Ex. B1	Certified copy of Will deed dated 27.12.1993
2	Ex. B2	Certified copy of Sale deed dated 22.11.1967
3	Ex. B3	Kist receipts 5 Nos. (Pasali 1377, 1381, 1381, 1386, 1393)
4	Ex. B4	Electricity Bill receipts 7 Nos.
5	Ex. B5	Patta for the suit 1 st Item in Patta No.388

6	Ex. B6	'A' Register Extract for for the suit 1 st item in Dry S.No.278/1.
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Subordinate Judge
Panruti.

Draft/Fair Order (AFT)
O.S. No.169/2010
Date: 12.06.2026